

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNIVERSITAS EDUCATION, LLC,

Plaintiff,

v.

NOVA GROUP, INC., et al.,

Defendants.

Case Nos. 11-1590-LTS and  
11-8726-LTS

**PETITIONER'S MOTION FOR APPEAL BOND**

Plaintiff Universitas Education, LLC ("Universitas") hereby moves the Court, pursuant to Fed. R. App. P. 7, for an order requiring Grist Mill Capital, LLC ("GMC") and Daniel Carpenter to post an appeal bond in the amount of \$200,000. The Court previously found that Universitas is entitled to attorneys' fees for the entirety of its collection efforts. (Docket entry no. 490 at 3-4.<sup>1</sup>)

On November 13, 2020 Carpenter moved the Court to vacate the judgment against him. (Docket entry no. 665.) On February 19, 2021, GMC moved the Court to vacate the judgment against it. (Docket entry no. 697.) The Court denied these motions on September 28, 2021. (Docket entry no. 722.) The Court also sanctioned Carpenter for filing the motion to vacate. (*See* docket entry no. 722.) A motion for sanctions against GMC's counsel regarding GMC's motion to vacate is *sub judice*. On October 26, 2021, GMC and Carpenter appealed the Court's denial of their motions to vacate. (Docket entry no. 726.)

Universitas respectfully request that the Court enter an order for GMC and Carpenter to post an appeal bond in the amount of \$200,000 for costs and attorneys' fees on appeal. *See Adsani*

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<sup>1</sup> All docket entry numbers refer to those in case number 11-CV-1590, unless otherwise noted.

*v. Miller*, 139 F.3d 67 (2d Cir. 1998) (holding that district court may direct appellant to file bond pursuant to Fed. R. App. P. 7 for costs and attorneys’ fees that may be awarded on appeal); *Horowitz v. 148 S. Emerson Assocs. LLC*, 888 F.3d 13, 25 (2d Cir. 2018) (“For ... Rule 7 of the Federal Rules of Appellate Procedure, ‘costs’ includes attorneys’ fees ... where the cause of action under which the suit at issue is brought so allow ....”) (internal citations omitted); *see also Car-Freshner Corp. v. Scented Promotions, LLC*, No. 5:19-CV-1158 (GTS/ATB), 2021 U.S. Dist. LEXIS 51975, at \*20-\*21 (N.D.N.Y. Mar. 19, 2021) (providing that considerations for appeal bond are (1) the financial ability of the appellants to post the bond, (2) the risk of the appellants’ non-payment if appeal is unsuccessful, (3) the merits of the appeal, and (4) whether the appellants have shown any bad faith or vexatious conduct) (internal citations omitted).

The appellants have the financial ability to post the requested bond – Mr. Carpenter has seemingly limitless resources and has already spent millions of dollars in attorneys’ fees on post-judgment litigation. (*See* docket entry no. 592 at 9-11.) It is a foregone conclusion that the appellants’ will not make payment should their appeal fail – in addition to the judgment against them (which they have not paid a cent toward), the Court awarded Universitas millions of dollars in attorneys’ fees against Carpenter’s entities. (*See e.g.*, docket entry no. 490.) These attorneys’ fees also remain unpaid and outstanding. The appeal is meritless – the Court characterized GMC and Carpenter’s primary argument as “without merit, but not ... entirely frivolous.” (Docket entry no. 722 at 21-22.) The Court found that another Carpenter argument lacked a “nonfrivolous argument to interpret the law in that fashion.” (Docket entry no. 722 at 22.) The Court has consistently found that Carpenter and his entities are acting in bad faith and engaging in vexatious conduct. (*See e.g.*, docket entry nos. 252 and 253.) The Court also found that the motion on appeal is another such vexatious motion filed in bad faith. (*See* docket entry no. 722 at 23-24 (“...

Carpenter's motive appears to have been at least in part to cause unnecessary expense on Universitas and an undue burden on the Court.”).

Universitas, through its undersigned counsel, certifies that pursuant to the Court's Individual Practices Rules it has used its best efforts to informally resolve the matters raised in this motion.

WHEREFORE, Universitas respectfully requests that the Court enter an order requiring GMC and Carpenter to post an appeal bond in the amount of \$200,000.

Dated: Alexandria, VA  
November 3, 2021

PLAINTIFF UNIVERSITAS EDUCATION, LLC

By: /s/ Joseph L. Manson III /

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*Admitted Pro Hac Vice*

**CERTIFICATION**

I hereby certify that on November 3, 2021 a copy of the foregoing motion was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF System.

/s/ Joseph L. Manson III /